IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Aarab Khan v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.2436/1991
under Articles 226 and 227 of the Constitution of India.

Date of Order : 23rd March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr, B.R.Mehta, for the petitioner.
Mr. L.R.Upadhyaya, Dy. Govt. Advocate.

BY THE COURT :

This writ petition is directed against the order dated 7.3.1989 passed by Collector, Jalore and the order dated 31.7.1990 passed by Board of Revenue for Rajasthan, Ajmer.

Briefly stated, facts of the case are that a detailed inquiry was conducted by competent authority and the ceiling proceedings initiated against the petitioner under Chapter-III-B of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”) were dropped by Sub

Divisional Officer, Jalore by an order dated 30.9.1970. The validity of the order dated 30.9.1970 was not challenged by State Government by way of filing appeal or revision and, therefore, the order dated 30.9.1970 acquired finality. The State Government issued a notice dated 29.6.1979 to the petitioner to reopen and re-decide the question of ceiling under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973"). The Collector, Jalore after holding regular proceedings held that the petitioner is having 17/4 standard acres excess land which is liable to be acquired by the State Government. The validity of the aforesaid order dated 13.6.1984 passed by the Collector, Jalore was challenged by the petitioner by way of filing an appeal before the Board of Revenue for Rajasthan, Ajmer. The appeal preferred by the petitioner was accepted by judgment dated 28.3.1985 and the Collector, Jalore was directed to decide the matter afresh after giving opportunity of hearing to transferers Nehru Khan and Gafur Khan. The Collector, Jalore by its judgment dated 7.3.1989 decided the matter afresh and held the petitioner liable to surrender 10.56 acres land to the State Government being in excess to the ceiling limits. The petitioner being aggrieved by the order dated 7.3.1989 passed by Collector, Jalore preferred an appeal under Section 23(2)(A) of the the Act of 1973 before Board of Revenue. The Board of Revenue by its

judgment dated 31.7.1990 dismissed the appeal preferred by the petitioner and affirmed the order passed by Collector, Jalore dated 7.3.1989. Hence this writ petition is preferred by the petitioner.

Beside other contentions the main contention of the petitioner is that reopening of ceiling case itself is without jurisdiction being time barred. According to the petitioner power to reopen ceiling cases is required to be exercised within a period of six years of commencement of the Act of 1973. The Act of 1973 came into force on 1.1.1973, as such ceiling case in present controversy could have been reopened prior to 1.1.1979. But in the present case the notice to reopen the ceiling case was issued on 29.6.1979, as such the same is without jurisdiction.

The counsel for the petitioner substantiated his contention by a Division Bench Judgment of this Court in the case of Dhanraj & Ors. v. State of Rajasthan, 1995 RRD 115, wherein this Court after considering all the provisions of the Act of 1973 held as under:-

> "This submission is ill-founded and unsustainable in law. A perusal of the Amending Act will show that the amendments were made with retrospective effect and it was provided that the provisions shall be deemed to have been incorporated in the Act from the date of commencement of the Amending Act, therefore, the amendment 15 of the

> Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 will have to be read as amended, as the amendment is deemed to have been always made. The established cannons interpretation of statute require that plain meaning should be given to the words and phrases occurring in statute and consequently the words 'within 6 years of the commencement of this Act' must necessarily mean commencement of the Ceiling Act, 1973 and not the Amending Act so considered. The notice issued on 7th Feb. 1980 is obviously beyond 6 years. The period of 6 years has been expired on 1.1.79, the State Government, therefore, had no power or jurisdiction under Section 15 of the Ceiling Act to direct reopening of the cases of the petitioners. In these three petitions, the notices and proceedings in persuance thereto are thus illegal and void for total lack of jurisdiction, the same are, therefore, quashed and set aside"

In the present case too the notice to re-decide and reopen ceiling case was issued after period of six years from the date of commencement of the Act of 1973, therefore, on that day the Government had no power or jurisdiction to do so.

The writ petition, therefore, is allowed and the orders impugned dated 7.3.1989 passed by Collector, Jalore and the order dated 31.7.1990 passed by Board of Revenue, Rajasthan, Ajmer are quashed. The notice dated 29.6.1979 issued by the State Government to re-decide and reopen the

ceiling case against the petitioner is also quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.